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COUNTY OF PRINCE WILLIAM

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June 8, 2012

The Honorable Angela Lemmon Horan
County Attorney
Prince William County Attorney's Office
One County Complex Court
Prince William, VA 22192-9201

SENT VIA EMAIL

Dear Ms. Horan:

Please consider this letter as a supplement to my letter of June 7, 2012, wherein I addressed my objections to the four Jenkins amendments to Resolution 11-D that I had proposed at the Board Meeting on June 5, 2012.

As you are aware, I sent an email to you on June 6, 2012, in which I reiterated the view I expressed in the June 5 Board Meeting "that we needed to give ourselves, staff, and citizens more time to process and understand the proposed amendments." The more I have researched these amendments, the more I am convinced that everyone involved that day should have supported that recommendation.

My email of June 6 was focused on what I believe is an improper termination of Reece Collins, who is employed in my District office as a part-time employee and has the responsibility to be my Communications Director. I made the specific argument that I could not "see how I can take appropriate action on Mr. Collins' employment in my office until I know precisely whether the language passed by the Board covers him in his current employment situation."

Your response was definitive, and I quote the relevant section of your email (sent on June 7, 2012) as follows:

"It is, therefore, my opinion that the specific language set forth above, offered and later clarified by Mr. Jenkins, and included by the Board in its action both by formal vote and by consent by silence to the Chairman's offer of reconsideration, *is now the operative employment policy of the Board with respect to its offices (emphasis added)*. The Board is empowered to directly enforce its policies. Further, in instances in which a person subject to County policies acts in contravention of policies or fails to act in compliance with County policy which applies to his or her actions, that person runs the risk of acting outside the scope of his or her

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actions, that person runs the risk of acting outside the scope of his or her legal authority. The consequences that flow from such a situation include, but are likely not limited to, a denial of coverage by the County's indemnification and insurance policies for claims against [sic] the person which arise in situations where the policy is either applicable or relevant.”

Based on your specific and definitive direction, I formally communicated with the Prince William County Human Resources Department and directed them to remove Mr. Collins from the County payroll. While I did so with extreme reluctance, your review of the potential consequences for failing to act in this manner placed me in an untenable situation with respect to the potential exposure related to indemnification and insurance policy claims in the event this situation results in litigation.

I initiated the termination procedures for Mr. Collins, effective June 7, 2012. I understand that Mr. Jenkins emphasized that he expected his amendments, and by reference, the termination of Mr. Collins to take place on June 5, 2012.

Frankly, I believe it is a reasonable expectation that some sort of effort would have been made to examine relevant statutes as to whether the amendment language proposed by Mr. Jenkins, and approved by the Board, does in fact cover Mr. Collins. Without hearing any objection from your office, I'm assuming this was done, considering I was taking the serious step of terminating an employee.

While I am not an attorney, I did find what I believe to be a relevant section of the Virginia Code that appears to call into question the legality of the action taken on the two amendments proposed by Mr. Jenkins related to political activity by District office employees.

I would direct your attention to the Code of Virginia, § 15.2-1512.2, covering political activities of employees of localities, firefighters, emergency medical technicians and law-enforcement officers and certain other officers and employees.

The relevant section of that statute that I believe directly contradicts the conclusion that the Jenkins' amendments relating to employee political activities are “now the operative employment policy of the Board with respect to its offices” is found in subsection B of that statute:

B. Notwithstanding any contrary provision of law, general or special, no locality shall prohibit an employee of the locality, including firefighters, emergency medical technicians or law-enforcement officers within its employment, or deputies, appointees and employees of local constitutional officers as defined in § 15.2-1600, from participating in political activities while these employees are off duty, out of uniform and not on the premises of their employment with the locality.

It is my understanding that this parallel issue concerning political activity of administrative aides to members of the City Council arose in January 2011 in the City of Alexandria. In that instance, Alexandria City Councilman Rob Krupicka posed the following question to the City Attorney:

“May city employees, including administrative aides to current members of the City Council, assist a member of the City Council in an election campaign?”¹

The answer from City Attorney James L. Banks, Jr., appears to be directly on point to the Jenkins amendments that relate to restricting employment of individuals who participated in some fashion in the campaigns of the Supervisor that currently employs them.

“While the City of Alexandria has addressed this issue in different ways over time, the current law of the Commonwealth at Va. Code § 15.2-1512.2 (B) (1950 as amended) supersedes previous local efforts at regulation and clearly permits all City employees to engage in such activity as long as they are off duty, out of uniform, and not on the premises of their regular employment with the City.”

The previously referenced “Collins Amendments”^{2 3} proposed by Supervisor Jenkins appear to be in direct violation of the Virginia Code.

Unless you believe this section of the Virginia Code does not apply (again, I understand I’m not an attorney), I would request that you provide your written opinion to the Board that concludes that the previously passed language cited as Jenkins Amendments #2 and #3 are not the operative employment policy of the Board with respect to its offices because they are superseded by state statute.

I would further request that you provide a written authorization for me to immediately direct the Prince William County Human Resources Department to rescind the prior termination of Mr. Collins, or in the alternative, to immediately reinstate Mr. Collins with

¹ Opinion; To: Rob Krupicka, Councilman; From: James L. Banks, Jr., City Attorney; Date: January 24, 2011; Subject: Political Activity by City Employees (see attached).

² Jenkins Amendment #2: “No Board Member will employ or retain any full-time or part-time employee on the County payroll who owns, is employed by, or is a contractor to any company which has provided or provides services for hire to a political campaign of that Board Member.”

³ Jenkins Amendment #3: “No Board Member will engage or retain any vendor services using County funds where the vendor has been or is retained by the political campaign of that Board Member.”

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full back pay to which he is otherwise entitled for the period during which he had been removed from the County payroll, with the acknowledgment that these amendments, and Mr. Collins' resulting termination, were barred by state statute.

In an abundance of caution, if you disagree with the application of the Code of Virginia, § 15.2-1512.2 to Mr. Collins' termination, I would respectfully request that you immediately take steps to facilitate the following actions:

1. Provide your written legal opinion as to why the referenced statute does not apply to Mr. Collins' employment status; and
2. A written notice to the County's indemnification and insurance policies for claims that the County may be subject to litigation for an improper termination and allow them to have their own attorneys to review the matter; and
3. Given the potential conflicts you might have in this matter due to (1) having consulted with the Board at the time of passage of the amendments in question and determined they were a legal action of the Board; and (2) your direction to me in your June 7 email that the amendments I questioned are "now the operative employment policy of the Board," I would request that you seek the appointment of outside counsel to represent the County in this matter, so we can maintain the utmost trust with the citizens.

My motivation these past several months has always been to stand up for the citizens of Prince William County, continue to improve the quality of life in Prince William County, and to reform county government so it more effectively serves the needs of the people I serve. The amendments passed on June 5, 2012, were more about settling political scores than good public policy, and I believe the people of Prince William County deserve better.

Respectfully submitted,



Pete Candland

cc: Prince William County Board of Supervisors
Melissa Peacor, County Executive
Phillip Campbell